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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,222	11/03/2003	Haeri Roh-Schmidt	3086/1435 (NP 4070)	3084

7590 01/10/2005

G. PETER NICHOLS
Brinks Hofer Gilson & Lione
NBC Tower, Suite 3600
P.O. Box 10395
Chicago, IL 60610

EXAMINER

MCCORMICK EWOLDT, SUSAN BETH

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/700,222		ROH-SCHMIDT ET AL.	
	Examiner		Art Unit	
	Susan B. McCormick-Ewoldt		1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>February 9, 2004. and April 15, 2004.</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims Pending

Claims 1-16 will be examined on their merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-7 and 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Vinson *et al.* (FEBS Letters 433 (1998) 44-46) in light of the Teaflavin website (<http://www.teaflavin.com/TeaFlavin/theaflavins.aspx>) in evidence of inherency. Vinson *et al.* disclose that by consuming black tea decreased the level of cholesterol in hamsters (mammal) by 17% and 27%, respectively (pg. 45, column 1, paragraph 2). Vinson discusses that tea contains theaflavins (pg. 44 paragraph spanning columns 1 & 2) but does not specifically teach that the tea contains all of the theaflavins claimed. The TeaFlavin website teaches that black tea naturally contains all of the theaflavins claimed. Thus, the black tea used by Vinson to lower cholesterol would inherently contain all of the theaflavins claimed. Therefore, Vinson properly anticipates the stated claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinson *et al.*

Art Unit: 1654

Vinson *et al.* specifically discloses the benefits of drinking black and green tea in mammals and the effects it had on cholesterol as discussed *supra*. Vinson *et al.* does not specifically disclose the claimed amounts of theaflavins but as discussed above it is recognized that black tea contains theaflavins. The reference specifically teaches that the theaflavins are an active cholesterol-lowering ingredient. One of ordinary skill in the art would be motivated to modify the amount of theaflavins in the cited reference to best lower cholesterol levels (Vinson *et al.* page 44, column 1, paragraph). The concentrations of active components are well-known result-effective variables, which would have been routinely optimized by one of ordinary skill in the art.

From the teaching of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention.

Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the cited references, especially in the absence of evidence to the contrary.

Summary

No claim is allowed.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (571) 273-8300.

Art Unit: 1654

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

Susan D. Coe
1-5-04
SUSAN D. COE
PATENT EXAMINER